

1 BILL NO. G-92-03-12 (AS AMENDED) (AS AMENDED)

2 GENERAL ORDINANCE NO. G-23-92

3
4 AN ORDINANCE ESTABLISHING
5 A PROCEDURE FOR EMPLOYEES
6 TO DECERTIFY A BARGAINING
7 AGENT.

8 WHEREAS, employees who are dissatisfied with
9 the efforts of a previously selected bargaining agent
10 should have a simple procedure to decertify such agent;

11 WHEREAS, the current procedure is unduly
12 burdensome on the employees;

13 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
14 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

15 SECTION 1. Section 20-16(e) of the Code of the
16 City of Fort Wayne, which reads as follows, is hereby
repealed:

17 (e) Majority status: The city's commitment,
18 as restated herein, is to allow for collective
19 bargaining and effective negotiation with its
20 employees. Such collective bargaining and
21 negotiation shall occur by and between the
22 city and a labor organization so selected as
23 the exclusive representative of employees in a
24 bargaining unit. The six (6) nonsafety unions
25 herein referred to have previously achieved
26 such exclusive representation status by an
affirmation of a majority of the employees
27 within the appropriate bargaining units. Such
recognition shall continue in full force and
28 effect unless a decertification or similar act
is obtained in accordance with all applicable
provisions of the International Labor
Relations Act, as amended by the Labor
Management Relations Act and all rules and
regulations thereto. It is recognized that
federal labor law does not apply to collective
bargaining with municipal employees, however,
for purposes of this subsection, such federal
labor law and regulations thereto shall apply.

29 SECTION 2. A new Section 20-16(e) is hereby
30 added to read as follows:

31 (e) Majority status: Recognition as the
32 exclusive bargaining agent for any bargaining
unit shall continue in full force and effect
unless a petition for decertification or a
petition for recognition of a separate
bargaining unit is filed with the Common
Council.

Upon the filing of a petition for
decertification signed by 30% (30 percent)

1 employees who are members of the bargaining
2 unit, the Common Council shall hold an
3 election within thirty (30) days of the filing
4 of said petition to determine whether a
5 majority of the members of the bargaining unit
6 desire to continue to be represented by the
7 previously recognized bargaining agent.
8 Notice of the election shall be given to the
9 affected bargaining agent and to all affected
10 employees. Ballots shall be returned to the
11 City Clerk and counted by tellers appointed by
12 the Council. The ballot question shall be:
13 "Should the [insert bargaining agent] continue
14 as the exclusive bargaining agent for [insert
15 bargaining unit]? YES NO ." If a
16 majority of the membership of the bargaining
17 unit vote no, the Common Council shall grant
18 the decertification petition and the agent is
19 decertified. No more than one petition to
20 decertify may be filed against any bargaining
21 agent in any twelve month period.

22 Employees who are members of an existing
23 bargaining unit may petition the Common
24 Council to recognize them as a separate
25 bargaining unit with the right to select their
26 own bargaining agent. A majority of the
27 Common Council must approve any new bargaining
28 unit.

29 In deciding whether a requested bargaining
30 unit is an appropriate bargaining unit, the
31 Common Council shall base its decision on the
32 following criteria:

- 33 1. Whether the employees have a community of
34 interest in wages, hours and working
35 conditions.
- 36 2. Whether the employees comprise a
37 homogeneous, identifiable, and distinct
38 group.
- 39 3. Whether the employees are interchanged
40 with other employees.
- 41 4. The extent of common supervision.
- 42 5. The previous history of bargaining.
- 43 6. Geographic proximity.
- 44 7. The desires of the employees.

45 The Common Council may appoint a hearing
46 officer to hear evidence on such issues and
47 report findings based on any evidence
48 presented.

49 If a new bargaining unit is identified and
50 approved by the Common Council, or if an
51 existing bargaining unit's agent is
52 decertified, an election shall be held within
53 sixty (60) days in which the membership may
54 select a new bargaining agent or choose to
55 have no representation. The decision of a
56 majority of those voting shall control.

If no choice receives a majority of the votes cast, the Common Council shall order a run-off election between the two (2) choices receiving the greatest number of votes.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and shall apply to all agreements entered into after its effective date.

Council Member

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2 GENERAL ORDINANCE NO. G-~~20-16~~

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Upon the filing of a petition for
decertification signed by ten or more
3090

1 employees who are members of the bargaining
2 unit, the Common Council shall hold an
3 election within thirty (30) days of the filing
4 of said petition to determine whether a
5 majority of the members of the bargaining unit
6 desire to continue to be represented by the
7 previously recognized bargaining agent.
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11 City Clerk and counted by tellers appointed by
12 the Council. The ballot question shall be:
13 "Should the [insert bargaining agent] continue
14 as the exclusive bargaining agent for [insert
15 bargaining unit]? YES ____ NO ____." If a
16 majority of the membership of the bargaining
17 unit vote no, the Common Council shall grant
18 the decertification petition and the agent is
19 decertified. No more than one petition to
20 decertify may be filed against any bargaining
21 agent in a single calendar year. *or at any twelve
month period.*

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23 bargaining unit may petition the Common
24 Council to recognize them as a separate
25 bargaining unit with the right to select their
26 own bargaining agent. A majority of the
27 Common Council must approve any new bargaining
28 unit.

29 In deciding whether a requested bargaining
30 unit is an appropriate bargaining unit, the
31 Common Council shall base its decision on the
32 following criteria: *use ix.*

- 33 1. The principles of efficient
34 administration of government,
35 including limiting the fragmentation
36 of government administrative
37 authority.
- 38 2. The existence of a community of
39 interest among the employees
40 assigned to the bargaining unit.
- 41 3. The history of employee organization
42 representation of members of the
43 bargaining unit.

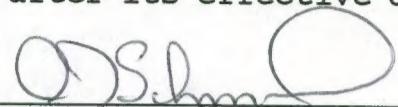
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49 approved by the Common Council, or if an
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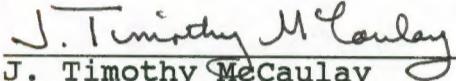
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PAGE 3

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2 full force and effect from and after its passage and any
3 and all necessary approval by the Mayor and shall apply
4 to all agreements entered into after its effective date.

5 
6 Council Member

7 APPROVED AS TO FORM
8 AND LEGALITY

9 
10 J. Timothy McCaulay
11 City Attorney

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Read the first time in full and on motion by Edmonds, seconded by Delmeier, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19_____, at _____ o'clock M., E.S.T.

DATED:

3-10-92

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Delmeier, seconded by _____, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>	<u>3</u>		
BRADBURY		<u>✓</u>		
EDMONDS		<u>✓</u>		
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO		<u>✓</u>		

DATED:

5-26-92

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 6-23-92
on the 26th day of May, 1992

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Thomas E. Henry

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of May, 1992
at the hour of 3:00 o'clock P.M., E.S.T.

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of May,
1992, at the hour of 11:45 o'clock A.M., E.S.T.

Paul Helmke

PAUL HELMKE, MAYOR

BILL NO. G-92-03-12

As Amended

REPORT OF THE COMMITTEE ON

COMMITTEE OF THE WHOLE

Hall
May 26

WE, YOUR COMMITTEE ON COMMITTEE OF THE WHOLE TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ ESTABLISHING A
PROCEDURE FOR EMPLOYEES TO DECERTIFY A BARGAINING AGENT

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (RESOLUTION) Hold till May 12

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Sam J Talarico
Janet G Bradbury
Lyn Edmonds
Mike Farney

NO REC

OSU

Mark G. Gauthier

James R. Gandy

Rebecca Levine

James P. Leary

DATED:

Sandra E. Kennedy
City Clerk

COMPARISON OF NLRA PROVISIONS
AND BILL NO. G-92-03-12

INTRODUCTION

Certain members of Council have requested a comparison of the NLRA and Bill No. G-92-03-12 as each pertains to designation of appropriate bargaining units and to decertification actions. The following is thus provided.

NUMBERS OF PETITIONERS TO INITIATE DECERTIFICATION PETITION

The NLRA provides 30% of the members of a bargaining unit must sign the decertification petition. See 29 U.S.C. §159(e)(1). The administration has agreed to an amendment of the pending bill to require 30%.

FREQUENCY OF DECERTIFICATION ACTIONS

The NLRA provides for only one decertification election in a twelve (12) month period. Bill No. G-92-03-12 provides for only one decertification election each calendar year. Little difference.

COMPARISON OF NLRA PROVISIONS
AND BILL NO. G-92-03-12PAGE 2WHO CAN ASK FOR DETERMINATION OF
APPROPRIATE BARGAINING UNIT

The NLRA is silent on who can ask to have an appropriate bargaining unit determined. However under NLRB regulations, "a party may file a petition for clarification of the bargaining unit." 29 C.F.R. §101.17. Bill No. G-92-03-12 provides "[e]mployees who are members of an existing bargaining unit may petition the Common Council to recognize them as a separate bargaining unit ..." The local bill is more restrictive than the NLRB regulations. An amendment saying "any employee" might be consistent if the goal is to be considered with the NLRA and NLRB regulations. Such an amendment should be considered as the "NLRB itself has indicated that it will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit to be included in an overall unit without allowing those employees the opportunity to express their preference in a secret election or by some other evidence that the majority of the group consent to be represented as part of the overall unit." 48 AM JUR 2d Labor and Labor Relations §663.

DETERMINATION OF BARGAINING UNIT

The touchstone of decisionmaking under the NLRA is "to assure the employees the fullest freedom in exercising the rights

COMPARISON OF NLRA PROVISIONS
AND BILL NO. G-92-03-12

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guaranteed . . ." 29 U.S.C. §159(b) (emphasis added). Note the protections are aimed at employees, not bargaining agents or employee organizations. Moreover, the NLRA further provides that in determining whether a unit is appropriate, "the extent to which the employees have organized shall not be controlling." 29 U.S.C. §159(c)(5). In determining appropriate bargaining units, "the employees community of interest in wages, hours, and working conditions is probably the most important single factor." 43 AM JUR 2d Labor and Labor Relations §662. Other factors include:

1. Whether the employees comprise a homogeneous, identifiable, and distinct group.
2. Whether the employees are interchanged with other employees.
3. The extent of common supervision.
4. The previous history of bargaining.
5. Geographic proximity.
6. Desires of employees.

Id.

Bill No. G-92-03-12 adopts the proposed definition contained in HB No. 1033, a proposal for state-wide collective bargaining. However, if the Council feels that the above six factors, together with the community of interest language are clearer, the administration would have no objection to such a clarifying

COMPARISON OF NLRA PROVISIONS
AND BILL NO. G-92-03-12PAGE 4

amendment at line 18 of page 2 of the bill. The amendment should read:

"1. Whether the employees have a community of interest in wages, hours and working conditions.

2. Whether the employees comprise a homogeneous, identifiable, and distinct group.

3. Whether the employees are interchanged with other employees.

4. The extent of common supervision.

5. The previous history of bargaining.

6. Geographic proximity.

7. The desires of the employees."

CONTRACT BAR TO DECERTIFICATION PROCESS

The bargaining agents who spoke in opposition to the bill called for a contract bar to decertification petitions. Any who suggested that the contract bar is part of the NLRA misspoke. "The contract bar rule is the product of NLRB policy, and nothing in the National Labor Relations Act requires the Board to establish or maintain a contract bar rule." 48 AM JUR 2d Labor and Labor Relations §700. The NLRB policy is not to conduct an election until a valid existing collective bargaining agreement, effective

COMPARISON OF NLRA PROVISIONS
AND BILL NO. G-92-03-12

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for a period of not longer than three years, nears its expiration date. Id.

To be consistent with the NLRA, Council may not want to add a "contract-bar" clause to the bill. However, the Council may wish to consider adding the "contract-bar" concept to its decisionmaking process. Afterall, as the NLRB once noted, "Bargaining relationship stability is no less a concern for management than it is for labor organization." East Mfg. Corp. (1979), 242 NLRB No. 5, 1978-79 CCH NLRB §15,804 (NLRB refused to allow union to disclaim interest in dissatisfied employees in order to allow the employees to affiliate with another bargaining agent during the life of an enforceable contract.)

CONCLUSION:

Bill No. G-92-03-12 with minor modifications can be made more consistent with the NLRA.

Respectfully submitted,

THE CITY OF FORT WAYNE
DEPARTMENT OF LAW

BY:

J. Timothy McCaulay
Corporation Counsel

DIGEST SHEET

TITLE OF ORDINANCE: General Ordinance

DEPARTMENT REQUESTING ORDINANCE: Mayor's Office

SYNOPSIS OF ORDINANCE:

1) Modifies procedures for decertifying collective bargaining agents.

2) Establishes City Council as final authority on recognition of bargaining agents.

*D-92-03-12
(as amended)(as amended)*

EFFECT OF PASSAGE: New procedures will apply.

EFFECT OF NON-PASSAGE: New procedures will not apply.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): -0-

ASSIGNED TO COMMITTEE (PRESIDENT) _____